

**Condensed Title:**

An Ordinance proposing an amendment to Section 142-693 of the Land Development Regulations of the City Code restricting the size of bars and restaurants as accessory use to a main permitted use in the R-PS1, R-PS2, R-PS3 and R-PS4 zoning districts in proportion to the number of hotel/apartment units through administrative approval.

**Key Intended Outcome Supported:**

Satisfaction with quality of life.

**Supporting Data (Surveys, Environmental Scan, etc)**

Quality of life in the City is rated highly, the City is seen as an 'excellent' or 'good' place to live, work, play or visit (and the majority feel it's getting better) and over ¾'s of residents would recommend it to others as a place to live.

**Issue:**

Should the City Commission adopt the proposed ordinance restricting the size of bars and restaurants as accessory use to a main permitted use in the R-PS1, R-PS2, R-PS3 and R-PS4 zoning districts in proportion to the number of hotel/apartment units without conditional use approval?

**Item Summary/Recommendation:****FIRST READING**

The proposed ordinance restricts the number of seats for accessory restaurants and bars to 1.25 seats per hotel or apartment unit for the entire site, and the patron occupant load to 1.5 persons per hotel or apartment unit. It also permits a hotel or apartment property with 20 units or more but less than 32 units, to have a restaurant or bar with a maximum of 40 seats in the aggregate for the entire site. The approvals for these restaurants or bars would be administrative for a Business Tax Receipt and would not require Conditional Use approval as in the current regulations.


The Administration recommends that the City Commission Approve the ordinance as originally referred to the Planning Board on first reading and set a second reading public hearing for the March 18, 2009 City Commission meeting.

**Advisory Board Recommendation:**

At the September 22, 2008 meeting, the LUDC recommended in favor of the ordinance with a modification that would allow the City Commission to waive the application requirement by a 5/7ths vote, provided such waiver is only instituted one time per board per meeting.

At the January 27, 2009 meeting the Planning Board recommended adoption of the ordinance with amendments to the original referral.

**Financial Information:**

Source of Funds:		Amount	Account
	1		
	2		
	3		
	<b>Total</b>		
<b>OBPI</b>			

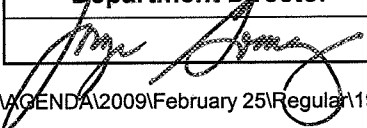

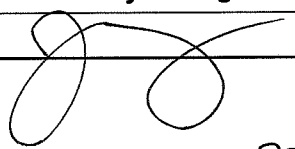
**Financial Impact Summary:**

The proposed Ordinance is not expected to have any fiscal impact upon the resources of the City.

**City Clerk's Office Legislative Tracking:**

Jorge Gomez or Mercy Lamazares

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
		

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MIAMIBEACH



# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: February 25, 2009

First Reading

SUBJECT: **Accessory Bars and Restaurants in RPS Districts**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS", DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693 "PERMITTED USES", BY RESTRICTING THE SIZE OF BARS AND RESTAURANTS AS ACCESSORY USE TO A MAIN PERMITTED USE IN THE R-PS1, R-PS2, R-PS3 AND R-PS4 ZONING DISTRICTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

### ADMINISTRATION RECOMMENDATION

Approve the ordinance as originally referred to the Planning Board on first reading and set a second reading public hearing for the March 18, 2009 City Commission meeting.

### BACKGROUND

At the March 12, 2008 meeting, the City Commission adopted an ordinance that restricted the number of seats for accessory restaurants or bars that serve alcohol in the R-PS1, 2, 3 and 4 districts. That regulation limited the number of seats to a maximum of one seat per hotel or apartment unit for the entire site, and the patron occupant load for all accessory restaurants and bars that serve alcohol on the entire site not to exceed 150 percent of the number of hotel and/or apartment units. Through the Conditional Use process, an applicant was able to apply for additional seats not to exceed twice the number of hotel or apartment units.

At the November 17, 2008 meeting, the Land Use and Development Committee reviewed a request to amend the above regulations, which after public discussion was referred to the Planning Board via the City Commission meeting of December 10, 2008.

### ANALYSIS

The referral from the City Commission seeks to further limit the number of seats in a restaurant or bar that is accessory to a main permitted use such as hotels or apartments in districts where these main uses are permitted.

As shown on the table below, neither hotels nor commercial uses are permitted in the R-PS1 and R-PS2; however, hotels and apartments are permitted in the R-PS3 and R-PS4, as well as in all CPS districts. What is not permitted in any of the RPS districts is an outdoor bar counter or neighborhood impact establishment except in hotels with more than 250 rooms in the R-PS4. The prohibition of outdoor bar counters and neighborhood impact establishment generally protects the neighborhood from intrusive collateral effects such as noise and litter.

Although the current regulations have a provision that relate the size of the accessory use restaurant or bar to the size of the main use through the Conditional Use process, the City Commission believes that these restrictions are not enough to protect the residential neighborhoods from the adverse impact of large venues in the area. The proposed ordinance would further reduce the number of seats permitted in an accessory use restaurant or bar serving alcoholic beverages.

Section 142-693 of the City Code lists the permitted uses in the PS districts (those areas that are generally south of 6<sup>th</sup> Street). The table below depicts in general terms what those main permitted uses and accessory uses are.

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Single-family; townhome; apartment; apartment/hotel	P	P	P	P Apartment/hotel not permitted
Hotel	N	P	P	N
Commercial	N	N	P	P 8% of floor area
Institutional	C	C	C	C 1.25% of floor area
Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.	N	However, accessory outdoor bar counters are permitted in oceanfront hotels with at least 100 hotel units in the R-PS4 district*	P*	N
Outdoor entertainment establishments and open air entertainment establishments	N	N	N	N

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Neighborhood impact establishments	N	N However, in the R-PS4 district, this use is permitted, as an accessory use in oceanfront hotels with 250 or more hotel units, as a Conditional Use. Access to the establishment shall be only from the interior lobby of the hotel and not from the street.	C	N
Accessory	P*	P*	P*	P*

P--Main permitted use; C--Conditional use; N--Not permitted

\* -- Accessory use only

The proposed ordinance restricts the number of seats for accessory restaurants and bars to 1.25 seats per hotel or apartment unit for the entire site, and the patron occupant load to 1.5 persons per hotel or apartment unit. It also permits a hotel or apartment property with 20 units or more but less than 32 units, to have a restaurant or bar with a maximum of 40 seats in the aggregate for the entire site. The approvals for these restaurants or bars would be administrative for a Business Tax Receipt and would not require Conditional Use approval as in the current regulations. The information below in a table format compares what is currently in today's Code and what is being proposed in this new amendment to the City Code:

	Code Prior to 2008	Existing Code (amended 3/12/08 by Ordinance No. 2008-3602)	Proposed Ordinance
# seats	Unlimited Accessory use no more than 49% of main use area. Neighborhood impact or entertainment establishments south of 5 <sup>th</sup> Street prohibited.	1 seat per unit up to 2 seats per unit with Conditional Use approval	1.25 seats per unit No Conditional Use approval required. Exception: a property with twenty (20) units or more, but less than thirty two (32) units, the restaurant or bar may have a maximum of forty (40) seats
Occupant. Load	As per Fire Marshall	1.5 persons per unit up to 2 persons per unit with Conditional Use approval	1.5 persons per unit No Conditional Use approval required.

The area affected by this regulation is shown in the map on the last page of this memorandum.

### **PLANNING BOARD ACTION**

At the January 27, 2009 meeting, the Planning Board recommended adoption of the ordinance by a vote of 7-0. The Board requested that the ordinance provide for restoration of contributing structures in a historic district such that if an existing contributing structure that qualifies for the minimum number of seats but through a restoration that is consistent

with the U. S. Secretary of the Interior Standards as may be approved by the Historic Preservation Board results in a reduction of no more than 15% of the number of units, the structure shall still be eligible for the minimum of 40 seats.

### **FISCAL IMPACT**

The proposed Ordinance is not expected to have any fiscal impact upon the resources of the City. However, a slight reduction in potential fees collected via Business Tax Receipt is anticipated as the ordinance will reduce the size of the accessory restaurants in the subject area.

### **CONCLUSION**

The Administration recommends that the City Commission approve the ordinance as originally referred to the Planning Board on first reading and set a second reading public hearing for the March 18, 2009 City Commission meeting.

Pursuant to Section 118-164 of the City Code, when a request to amend the Land Development Regulations does not change the actual list of permitted, conditional or prohibited uses in a zoning category the proposed ordinance may be read by title or in full on at least two separate days and shall, at least ten days prior to adoption, be noticed once in a newspaper of general circulation in the city. The notice of proposed enactment shall state the date, time and place of the meeting; the title of the proposed ordinance; and the place or places within the city where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Immediately following the public hearing at the second reading, the City Commission may adopt the ordinance. An affirmative vote of five-sevenths of all members of the city commission shall be necessary in order to enact any amendment to the Land Development Regulations.

JMG/TH/JGG/ML

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**Affected Zoning Districts – RPS-3 and RPS-4**



**Accessory Bars and Restaurants in RPS Districts**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS", DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693 "PERMITTED USES", BY RESTRICTING THE SIZE OF BARS AND RESTAURANTS AS ACCESSORY USE TO A MAIN PERMITTED USE IN THE R-PS1, R-PS2, R-PS3 AND R-PS4 ZONING DISTRICTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Beach Land Development Regulations contain regulations that permit restaurants and bars as an accessory use to hotels and apartment buildings; and

**WHEREAS**, the size of restaurants or bars that are accessory to a main permitted use should be in proportion to the size of that main permitted use; and

**WHEREAS**, the current regulations do not create a relationship between the size to a hotel or apartment in terms of units, and the size of the accessory restaurant in terms of number of seats; and

**WHEREAS**, it is in the best interest of the city and the general health, safety and welfare of its residents to control the size of accessory restaurants in direct proportion to the main use.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 18, "PS Performance Standard District," is hereby amended to read as follows:

**Sec. 142-693. Permitted uses.**

\* \* \*

- (d) In the R-PS1, 2, 3 and 4 districts, the number of seats for accessory restaurants or bars that serve alcohol shall be limited to a maximum of ~~one (1)~~ 1.25 seats per hotel or apartment unit for the entire site. The patron occupant load, as determined by the Planning Director or designee, for all accessory restaurants and bars that serve alcohol on the entire site shall not exceed ~~150%~~ 1.5 persons of the number of per hotel and/or apartment units. For a hotel or apartment property of twenty (20) units or more, but less than thirty two (32) units, the restaurant or bar may have a maximum of forty (40) seats in the aggregate on

~~the site. The number of units shall be those that result after any renovation. An applicant may apply for additional seats or patron occupant load in excess of the numbers as determined in this subsection (d) through the conditional use procedures in Chapter 118, Article IV, and subject to the review criteria listed in Section 142-1362 (a). However, conditional use approvals under the forgoing referenced procedure shall not exceed twice the number of seats or patron occupant load allowable under this section.~~

- (d ~~e~~) Commercial and noncommercial parking lots and garages shall be considered as a conditional use in the R-PS1, 2, 3 and 4 districts.
- (e ~~f~~) Video game arcades shall be considered as a conditional use in the C-PS1, C-PS2, C-PS3, and C-PS4 districts.

## **SECTION 2. REPEALER**

All ordinances or parts of ordinances *in* conflict herewith be and the same are hereby repealed.

## **SECTION 3. SEVERABILITY**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

## **SECTION 4. APPLICABILITY.**

Notwithstanding the provisions of Section 118-168(a) of the City Code regarding the enforcement of amendments to the land development regulations, for purposes of this ordinance only, those projects that have received approval (land use board approval, building permit, or license) as of the effective date of this ordinance shall be entitled to apply for any extensions of time that may have been permitted at the time of such approval based upon the plans approved, and shall be treated for purposes of consistency with this ordinance, as conforming uses and structures for purposes of Chapter 118, Article IX, "Non-conformances" for as long as the licenses are maintained.

## **SECTION 4. CODIFICATION**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

## **SECTION 5. EFFECTIVE DATE**

This Ordinance shall take effect ten days following adoption.



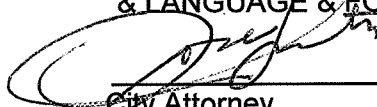
PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM  
& LANGUAGE & FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

2/18/09  
\_\_\_\_\_  
Date

First Reading:

Second Reading:

Verified by: \_\_\_\_\_  
Jorge G. Gomez, AICP  
Planning Director

Underscore denotes new language  
~~Strikethrough~~ denotes deleted language

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**Accessory Bars and Restaurants in RPS Districts**

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**WHEREAS**, the City of Miami Beach Land Development Regulations contain regulations that permit restaurants and bars as an accessory use to hotels and apartment buildings; and

**WHEREAS**, the size of restaurants or bars that are accessory to a main permitted use should be in proportion to the size of that main permitted use; and

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the site. The number of units shall be those that result after any renovation. If a contributing structure containing between 20 and 32 units (which qualifies for 40 seats) is renovated pursuant to a Certificate of Appropriateness resulting in a reduction of no more than 15% of the number of units, the structure shall remain eligible for the 40 seat maximum. An applicant may apply for additional seats or patron-occupant load in excess of the numbers as determined in this subsection (d) through the conditional use procedures in Chapter 118, Article IV, and subject to the review criteria listed in Section 142-1362 (a). However, conditional use approvals under the forgoing referenced procedure shall not exceed twice the number of seats or patron-occupant load allowable under this section.

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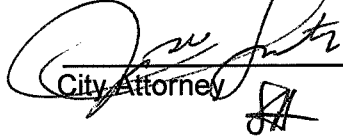
**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM  
& LANGUAGE & FOR EXECUTION

 2/18/09  
\_\_\_\_\_  
City Attorney Date

First Reading:

Second Reading:

Verified by: \_\_\_\_\_  
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Planning Director

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